

E9



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,582	11/05/2003	Calvin Lee Mitchener	1818-1	7592

43106 7590 07/28/2005

CLIFTON T. HUNT, JR.  
4812 SIX FORKS ROAD, #705  
RALEIGH, NC 27609

EXAMINER
----------

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
----------	--------------

3654

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/700,582	<b>Applicant(s)</b> MITCHENER, CALVIN LEE	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 5/18/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claim 16 is objected to because of the following informalities: Part D of the claim should be listed under part C as it is a continuation of the phrase. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Runck. It is noted that the applicant is claiming the subcombination of an apparatus for cleaning gutters supported by spikes and not the combination of an apparatus and gutters supported by spikes. Runck discloses a rod and rake capable of collecting debris in a gutter, the rake comprising a shaft (F) extending axially from one end of the rod and including a center tooth (C) and two side teeth (D), the center tooth extending axially from the shaft of the rake, the two side teeth extending from the shaft of the rake in

Art Unit: 3654

diverging relation to the center tooth and extending from the shaft of the rake a lesser distance than the center tooth, the center tooth and each of the side teeth terminating in a slight downward curve to a forwardly extending end portion with an upwardly and rearwardly inclined flat bottom surface (see figures 1 and 5), and the rake being small enough to be moved with the rod under spikes in the gutter, depending on the height of the spikes, whereby the rod is capable of being used to push the rake over debris and under spikes in the gutter to a desired point for collection of the debris and the rod may then be used to pull the rake against the debris.

2. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Despain et al. Despain et al. discloses a method to collect leaves and debris in a single sweep in a gutter supported by a plurality of spikes comprising the steps of:

- a) provide a rod long enough to be extended under a plurality of the spikes,
- b) provide a rake on one end of the rod, the rake being small enough to move under the spikes with the rod,
- c) manipulate the rod to place the rake in the gutter before one of the spikes with the teeth on the rake extending up,
- d) manipulate the rod to push the rake with its teeth extending up over leaves and debris in the gutter and beneath said one spike and beneath successive spikes to a desired point, and
- e) manipulate the rod to have the teeth on the rake extend down after the rake reaches the desired point and to pull the rake with its teeth extending down against the

Art Unit: 3654

leaves and debris to said one spike. (col. 2, lines 14-44 discloses the method including raking the debris and then turning the rake backwards to sweep the debris under the spikes).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Despain et al.

4. Re claim 14, Despain et al. discloses a method for a workman (16) working from a single position (fig 1) to clean a gutter (14) supported by a plurality of spikes (48) spaced along the gutter and attaching the gutter to a roof (18), the method comprising:

- a) providing the workman with a rod (12),
- b) providing a rake (10) on one end of the rod,
- c) the rake being small enough to be manipulated through the gutter and beneath the spikes responsive to manipulation of the rod by the workman (col. 2, lines 32-38; col. 6, lines 14-34).

- d) the workman positioning himself with at least twelve feet of the gutter extending beyond each side of the workman (see fig 1; as far as can be seen, at least twelve feet of the gutter extends on both sides of the operator 16),

- e) the workman manipulating the rod to rake in beneath the spikes leaves and debris within twelve feet away from each side of the workman.

Despain et al. does not disclose how far the spikes are apart from each other since gutter spikes are usually positioned at a standard distance. Despain et al does not

Art Unit: 3654

disclose the rod is at least twelve feet in length, he discloses "the length of handle can vary depending on the distance on the distance the operator desires to stand away from the edge of the gutter" (col. 5, lines 15-19). It would have been obvious to one of ordinary skill in the art to provide an operator with a gutter cleaner of twelve feet in length in order to clean twelve feet on both sides of the operator equaling twenty-four feet altogether.

***Allowable Subject Matter***

Claim 16 is allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 13-16 have been considered but are moot in view of the new ground(s) of rejection as above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3654

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO



KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600